UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

KEVIN KILELEE,) Plaintiff,) v.) DOW CHEMICAL COMPANY) Defendant.)	CIVIL ACTION NO. 1:04-CV-12130-MEL

DEFENDANT'S MOTION TO DISMISS

Pursuant to Federal Rules of Civil Procedure 12(b)(6) and Local Rule 7.1, The Dow Chemical Company ("Dow"), by and through its undersigned counsel, hereby moves this Court to dismiss Plaintiff's Complaint in its entirety for failure to state a claim upon which relief can be granted. As grounds for this motion, Dow states that the Employee Retirement Income Security Act of 1974 ("ERISA") preempts each of Plaintiff's claims. 29 U.S.C. § 1144(a).

In support of this Motion, Dow submits the accompanying Memorandum of Law in Support of Defendant's Motion to Dismiss.

WHEREFORE, Dow respectfully requests that this Court grant this Motion to Dismiss.

REQUEST FOR ORAL ARGUMENT

In accordance with Local Rule 7.1(D), Dow hereby requests oral argument on this motion.

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Respectfully submitted,
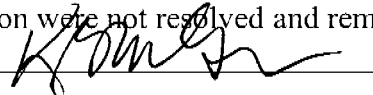THE DOW CHEMICAL COMPANY
By its Attorneys,

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DATED: November 15, 2004

Certification of Complaince with Local Rule 7.1

Undersigned counsel for Dow hereby certifies that a telephonic conference was held on November 15 with David G. Prentiss, Esq., counsel for Kevin Kilelee, in accordance with Local Rule 7.1(A)(2) in an attempt to narrow the differences between the parties or eliminate the need for this Motion. Undersigned counsel represented Dow in the conference. Although the parties conferred in good faith, the issues raised in this motion were not resolved and remain in dispute.

Kristin Glennan McGurn

Certificate of Service

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by hand on November 15, 2004.

Kristin G. McGurn

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